

**BEFORE THE FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554**

IN THE MATTER OF:)
)
Request for Waiver for the) **CC Docket No. 02-6**
)
LEE COUNTY SCHOOL DISTRICT)
Fort Myers, Florida)

Request for Waiver

The Lee County School District (“Lee County” or the “District”), pursuant to and in accordance with Sections 54.719 – 54.721 of the Federal Communication Commission’s (“FCC” or “Commission”) rules, hereby requests the review of Administrator’s Denial for wireless broadband internet access discounts issued by the Universal Service Administrative Company (“USAC”) as administrator of the E- Rate Program (“E-rate”). Lee County respectfully submits that under the circumstances there is good cause for the Commission to waive the rule in question. In particular, Lee County¹ appeals their June 19, 2013 Funding Commitment Decision Letter² concerning two funding requests³.

In the FCDL, the reason for denial for FRN **2398046** states: *“This is a new FRN. It was split from FRN 2327814. The new FRN contains the following product(s)/service(s): Cellular Data Plans, WiFi tethering, Air Card service and Mobile Hotspot service for \$8,738.50/month. **The FCC form 470 that established the competitive bidding process for this FRN did not include service of this type; therefore, it does not meet the 28 day competitive bidding requirement.**”*

The reason for denial for FRN **2398047** states: *“This is a new FRN. It was split from FRN 2328011. The new FRN contains the following product(s)/service(s): 3G Mobile Hotspots, Cellular Data Plans with WiFi Tethering Plan, Tablet Data Plan, 3G Air Card service for \$7,001.60/month. **The FCC form 470 that established the***

¹ Lee County’s Billed Entity Number (BEN) is 127832.

² See attached **Lee County FY2012 FCDL 828284.pdf**

³ The Form 471 in question is 828284. The funding requests involved are 2398046 and 2398047.

competitive bidding process for this FRN did not include service of this type; therefore, it does not meet the 28 day competitive bidding requirement.”

While it is true that the wireless internet access was not specifically noted⁴ as a category of service on the referenced Form 470, Lee County respectfully contends that this clerical oversight did not impact the competitive bidding process or otherwise negatively impact the fund in any fashion, nor does it constitute any waste, fraud or abuse of any kind. There was a very detailed RFP⁵ associated with the competitive process to procure these services which clearly indicated the District’s intent to purchase mobile internet access in conjunction with cellular voice services. Much of the internet access in question was part of wireless cellular service on devices that require **both voice and data** and the remaining mobile internet access services requested were detailed in the RFP. In fact, the Commission itself has since recognized that simply missing a check box on Form 470 indicating telecommunications or internet access has had a negative impact on applicants throughout the Country and upon release of the 2013 Eligible Services List, the following changes were made⁶.

Para 5 “... we update the ESL for funding year 2013 to consolidate the current list of telecommunications services, telecommunications and Internet access into a single Priority One category... Moreover, many of the services purchased by schools and libraries using E-rate funding **can fall into more than one of the regulatory classifications**. While these regulatory distinctions remain, moving the several types of Priority One services into one list on the ESL reflects the marketplace understanding that specific telecommunications services and Internet services may be used interchangeably to meet communications needs.” The R&O (2013 ESL) goes on to say Para 6, “...we do not expect applicants to classify their service requests into those categories when soliciting bids for those services. We therefore direct USAC, in conducting program integrity assurance (PIA) reviews, not to treat an applicant’s failure to correctly identify

⁴ The District’s former E-Rate consultant prepared and submitted the referenced Form 470

⁵ See attached **Lee County 2012-2013 Request for E-Rate Proposal Cellular and Mobile IA.pdf**

⁶ DA 12-1553 2013 ESL Report and Order http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-12-1553A1.pdf

the type of Priority One service it is seeking on the FCC Form 470 as an automatic violation of the competitive bidding requirements...”

Lee County contends that not checking the box for Internet Access on the fund year 2012/2013 Form 470 in question essentially equates to a minor ministerial or clerical error and is simply a procedural issue similar to those addressed as part of the Commission’s *landmark* Bishop-Perry Order (FCC-06-54).

To withhold funding from the district because of what amounts to a missing check mark, is contrary to the goals and objectives of the E-Rate program and will cause unnecessary and undue harm to Lee County School District.

Conclusion

Lee County requests that the Commission redirect the application and funding request to USAC for further review and full funding.

Respectfully Submitted,

/s/ Kimberly M. Friends

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